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In The

Supreme Court of the United States

OWASSO INDEPENDENT SCHOOL DISTRICT NO. I-011, a/k/a OWASSO PUBLIC SCHOOLS, *et alia*,

Petitioners,

v.

KRISTJA J. FALVO, as parent and next friend of her minor children, ELIZABETH PLETAN, PHILIP PLETAN, and ERICA PLETAN,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF OF *AMICI CURIAE* COUNCIL OF COUNSELING PSYCHOLOGY TRAINING PROGRAMS, *et alia*, IN SUPPORT OF RESPONDENT

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October 12, 2001

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QUESTION PRESENTED

Whether the Family Education Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, prohibits an educational institution that receives federal funds from allowing its students to grade one another's tests or other work or to call out aloud their grades in class for the teacher to record in the grade book.

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STATEMENT OF CONSENT

Mr. Jerry Richardson, Counsel for Petitioner Owasso Public Schools, and Mr. Will K. Wright, Jr., Counsel for Respondent Kristja J. Falvo, have given their written consent to the filing of this *amicus* brief in support of the respondent. The original drafts of these written consents are being filed concurrently with this brief.[1]

INTEREST OF *AMICI CURIAE*

The Council of Counseling Psychology Training Programs ("CCPTP") is an association of 67 universities in the United States which train counseling psychologists at the doctoral level. Individual counseling psychologists are also eligible for non-voting membership.

"Counseling psychology is a broad-based applied specialty within the science of psychology. As psychologists, we are committed to the generation and application of psychological knowledge based on scientific views of the world. As counseling psychologists, we are engaged in the pursuit and application of psychological knowledge to promote optimal development of individuals, groups, and social systems; to provide remedies for psychological difficulties and problems of living; and to enhance individual learning and education."

---

[1] Neither counsel for the petitioner nor counsel for the respondent participated in the drafting of this brief. All monetary contributions to the preparation and submission of this brief were furnished by the *amici curiae*, its members, and their counsel.

"Counseling psychology training programs are developed from a scientist-practitioner model of education. At a core level this model prescribes the integration of science base with practice applications and the development of research that is relevant to practice." (A CCPTP Commitment to the Integration of Science and Practice, 1994; http://www.lehigh.edu/ccptp/.)

The interest of CCPTP and the individual friends of the Court in this case stem from their dedication to enhance individual learning and education. Counseling psychologists who work in the schools and who train school counselors know how important a supportive educational environment is. Educational practices that degrade and humiliate students undermine the efforts of counselors to build positive attitudes toward learning. Thus, CCPTP and the individuals supporting this brief are dedicated to creating school environments that give support and encouragement for all children to improve so they can lead constructive and satisfying lives.

STATEMENT OF FACTS

Amici defer to the parties for a description of the full factual history of the case.

SUMMARY OF THE ARGUMENT

Amici are asking the Court to uphold the FERPA requirement that education records shall not be revealed without parental consent. A school grading practice in

which students score each others' tests and require students to call out those scores so teachers can write them in the grade book is clearly in violation of FERPA unless parental consent is given. The issue is important, however, not merely because it is illegal. It is important because of the ways in which teachers would be allowed to treat children in the absence of this law.

The Owasso grading practice is harmful to children. It subjects them to an atmosphere of ridicule, humiliation, and rejection. The vast majority of teachers do not use this harmful practice, but the minority who do use it are taking unnecessary risks with the welfare of children. Rejected children are the ones motivated to commit acts of school violence.

If there were some overriding educational benefit for the grading practice, maybe the risks to children would be justified. However, the arguments presented in favor of the practice state only that it provides repetition, immediate feedback and greater teacher efficiency. Repetition of correct answers by the teacher does not require peer grading. Immediate feedback to learners is desirable but can be accomplished much more efficiently by providing it directly to each learner, not through intervention by another student. Teacher efficiency and performance are actually diminished by the practice because valuable class time is spent in recording scores instead of learning new material. Besides, it is neither desirable nor necessary for every student paper to be graded.

Arguments that peer grading is some type of long-standing and honored educational practice are nonsense. There is no evidence in the educational literature that the

peer grading described here even takes place in the public schools, let alone that it could have some beneficial consequences.

Fears have been expressed that a ruling in favor of children and parents would do great harm to many traditional educational practices. These fears are groundless. A clear ruling in this case would not affect cooperative learning, peer editing, Socratic questioning, classroom discussions, corrective feedback, chalkboard problem solving, bulletin board displays, honor societies or selection of valedictorians. The case has to do with disclosing specific information that appears in education records about individual students without parental consent. Parents may well give their consent – in which case there is no legal problem. However, parents who do not want their children exposed to this potentially aversive environment should have the option allowed by FERPA.

Finally, we hear arguments about the definition of an "education record." Clearly the teacher's grade book is an education record, not a private diary. Grade books are collected and preserved at the end of each academic year by school districts, and their contents are routinely revealed to other educational professionals during meetings devoted to helping individual children succeed. Unauthorized disclosure of information entered in the grade book needs to be prevented regardless of the exact timing of the entry.

ARGUMENT

I. The psychological welfare of children is harmed by the peer grading practice.

It is important to be specific about the events that triggered this case initially. The peer grading practice at issue included the following steps:

1. The teacher administered a test;
2. After students completed the test, the teacher asked students to exchange papers;
3. The teacher read the correct answers out loud and asked students to score their neighbors' papers in accordance with the teacher's scoring key;
4. The scored papers were then handed back to the original owners;
5. The teacher asked each student to call aloud his or her score;
6. Students who refused to call out their scores were invited to go to the front of the classroom and whisper their scores to the teacher;
7. The teacher wrote the announced score for each child in the grade book.

This peer grading practice violated FERPA twice: (1) When the child scoring the test determined another child's score to be entered in the grade book, and (2) When the whole class learned the score as it was called out to be entered in the grade book.

Contrary to media reports that describe this issue as "paper swapping" and beneath the dignity of the

Supreme Court to address, the issue before us involves not only the legal right to confidentiality as protected by FERPA but also the serious consequences which result when that confidentiality is violated in the school environment.

A. Children are highly concerned about their school grades. Two studies document the importance with which teenagers regard the grades they get in school. The first study was reported in *USA Today* on August 26, 1999, under the headline: "Poll: Teen's Greatest Pressure is Grades." Then Secretary of Education Richard Riley released findings of the poll that was conducted by Peter Hart Research Associates. The survey asked 1,015 teenagers across America to list the one or two of the greatest pressures they face. The largest group, 44%, cited pressure to get good grades as their greatest pressure. Details can be obtained at the following website: http://www.countonshell.com/products/poll/poll-___teens___fs.html.

The second poll was conducted more recently by the same research firm and summarized in an article by Alan Elsner syndicated by Reuters and published in the *Detroit Free Press* on August 8, 2001:

"American high school students feel much more pressure to get good grades and go to college than to look cool, do drugs or have sex, according to a report issued Tuesday."

"The report by the Virginia-based Horatio Alger Association of Distinguished Americans was based on a

poll of 1,014 high-school students across the nation conducted in May. Pollster Peter Hart said it presented a largely upbeat picture about U.S. teens."

"Asked to rank pressures in their lives, 26 percent said the need to get good grades was a major problem; 36 percent called it a minor problem. That was higher than the 16 percent who said pressure to look a certain way was a major problem. About 15 percent cited finances as a major problem; 14 percent had a major problem getting along with their parents; 12 percent cited pressure to do drugs or drink alcohol; 10 percent spoke of pressure to have sex, and 9 percent listed loneliness and a feeling of being left out."

B. If their grades are too low, or too high, children get teased and taunted. Publicly disclosing test scores and grades to other students subjects students to ridicule and humiliation by their peers. One of the factors identified by psychological research as contributing to child victimization by bullying is that the child is " . . . slow in learning things;" (Rigby, 2001). Peer pressure to conform is especially intense in the preteen and teenage years. Any child deviating from the norm is subjected to name-calling, teasing and bullying. It is not only low-scoring students who are humiliated by labels such as "dummy." High-scoring children are also ridiculed with labels such as "geek," "nerd," "teacher's pet," or even cruder designations.

In this particular case, one of the Findings of Fact is that ridicule was experienced as a result of this grading practice: "5. As a result of the practice, plaintiff children have experienced ridicule (Philip), incorrect grading

(Elizabeth), and been asked to change grades of fellow students (Erica)." (United States District Judge Terry C. Kern, United States District Court for the Northern District of Oklahoma, No. 98-C-765-K.)

In her excellent book on motivation, Stipek (1998) evaluated the research evidence with this summary:

"**Minimize public evaluations**. Wall charts and other public displays of students' performance may enhance the motivation of a very small group of top performers, but they can threaten and discourage other students, especially if evaluative criteria are uniform despite varying skill levels among students . . . these public displays orient attention to relative performance rather than personal improvement or mastery" (p. 100).

Test scores are a particularly egregious source of humiliation because of their very nature – the evaluative criteria are uniform despite varying student skill levels. On every test in every classroom fully 50% of the students will score below average every time. By definition the arithmetic average in a normal distribution is the midpoint. Unlike the children of Lake Woebegone, elsewhere in the world it is impossible for all children to be above average. Usually it is the same children who score below average on test after test. Publicly disclosing the exact amount that they deviate from the average does irreparable harm to their self-esteem, peer relationships and motivation to succeed. We have abundant evidence that low-scoring students are far more likely to get arrested and to get into serious trouble with the law (Arum, 1999; Gottfredson, 1981; Gottfredson, 1988; Jensen, 1975; Loeber & Dishion, 1983).

C. Repeatedly allowing their grades to be known by peers exposes them to increased levels of humiliation. If the disclosure of education records were a one-time occurrence, it might be forgivable. But when repeated day after day and month after month, a policy of allowing teachers to require students to grade other students' papers and to have the grades called out loud for all to hear provides grist for the teasers and bullies to isolate and alienate certain students. Citing the work of Hoover & Hazler (1991), Kochenderfer & Ladd (1996a, 1996b), and Slee (1994), Ladd and Ladd (2001) point out that " . . . frequent harassment may lead children to develop a sense of mistrust toward their peer group at large and thus become so preoccupied with feelings of social alienation and concerns for their safety that they have difficulty attending to the demands of school and eventually develop negative school attitudes" (p. 27).

D. Acts of school violence tend to be committed by students who have been repeatedly harassed by peers. The peer grading practice is not only illegal, it is also a potential contributor to school violence. We already know that almost all the perpetrators of recent school shooting tragedies had been victims of teasing and bullying and had been alienated and isolated from their peers (Leary, Kowalski, Smith, & Phillips, 2001). Many young men who commit acts of violence feel rejected (Garbarino, 1999; Walsh, Beyer, & Petee, 1987).

The evidence is not only correlational. In a well designed series of experiments, Twenge, Baumeister and Tice (in press) found that participants who had been socially excluded evidenced significantly more aggressive behavior toward others than those not excluded.

In his excellent analysis of the Columbine disaster, Social Psychologist Elliot Aronson (2000) points out that the nature of the social situation in which youngsters are embedded is a powerful cause of deviant behavior: " . . . the perpetrators were reacting in an extreme and pathological manner to a general atmosphere of exclusion. This is a school atmosphere that most of the student body finds unpleasant, distasteful, difficult and even humiliating. If this is the case, then instituting a significant change in the social atmosphere of the classroom might succeed in making the school a safer place (reducing the possibility that students will become so disgruntled that they go over the edge and commit acts of extreme violence). This might also succeed in producing the kind of social environment that will make the school a more pleasant, more stimulating, more compassionate, and more humane place for all the students" (pp. 13-14).

Aronson goes on to say, "From my classroom research, I have found that the social atmosphere in most schools is competitive, cliquish, and exclusionary. The majority of teenagers I have interviewed agonize over the fact that there is a general atmosphere of taunting and rejection among their peers that makes the high school experience an unpleasant one. For many, it is worse than unpleasant – they describe it as a living hell, where they are in the out-group and feel insecure, unpopular, put-down, and picked on" (p. 15).

His principal solution to the problem involves creating cooperative, not competitive, classroom environments and cites abundant evidence that such cooperative atmospheres produce more harmonious working conditions

with no diminution in academic accomplishment. Preventing teachers from publicizing student grades will not solve all the problems, but it will minimize the salience of individual differences.

It is of interest to note that Columbine High School now requires parental consent for peer grading. The letter to parents explains, "This grading practice could include marking answers right or wrong and placing the appropriate number, percentage, or letter grade on the work of other students. In order to continue this practice, written consent from parents of students younger than 18, or students 18 and over is now required."

If parents are willing to allow their children to be treated in this way, the grading practice would be legal. Parents who object to the practice, however, should not be required to subject their children to such a potentially harmful environment.

II. The peer grading practice has no educational benefits and merely uses children as unpaid clerical assistants.

The only benefits claimed for the practice are (a) repetition of a basic skill, (b) immediate feedback, and (c) allowing teachers to be more efficient and productive. (Oklahoma Education Association *Amicus Curiae* brief, pp. 4-5.) Let's examine each claim.

A. Repetition does not require peer grading. The repetition presumably occurs because the teacher reads out the correct answers which had been taught previously. The children may hear the correct answers twice,

but they do not have an opportunity to practice the skill twice. Repetition is useful in learning a new skill primarily when the learners are doing the repetition, not when the teacher is repeating old information. If the teacher needs to repeat information, it need not necessarily be done during peer grading.

B. Immediate feedback to students can be achieved without publicizing their grades. Certainly immediate feedback is desirable, but there are other ways of providing it that do not violate confidentiality:

> **1. Students can score their own papers as teachers read the correct answers.** There is no need for students to exchange papers. In fact, scoring someone else's paper delays feedback and focuses attention on someone else's understanding, not on one's own. Some would argue that students might cheat if they score their own tests. It is also true that students might cheat in scoring others' tests – conspiring to be lenient in scoring a friend's paper but harsh in scoring the paper of someone in the out-group. A Finding of Fact by Judge Kern cited above indicates that Erica had been asked to change the grades of fellow students. If the purpose of a test is to provide immediate feedback, certainly the best way is to provide it directly to the test taker.
>
> **2. Students can look up the correct answers in keys provided by the teacher or textbook.** Many textbooks provide problems with the correct answers in the appendix. The educational goal is to learn how to solve the problems, not merely to write down the correct answers. Alternatively, teachers could photocopy their scoring keys and ask students to score their own tests either in class or as homework assignments.

> **3. Students can use computers for certain types of learning tasks.** Computers can provide exercises in mathematical understanding, language usage and other subject matters and provide instantaneous feedback to students. A large number of computer programs are available for this very purpose.
>
> **4. Student papers could be coded to disguise ownership.** If teachers insisted on using students as unpaid clerical assistants, privacy could still be partially protected by assigning a numerical code in place of each student's name.

C. Peer grading wastes valuable classroom time. Teachers who use students to score tests and require students to call out their scores justify the practice as saving teacher time – ignoring the fact that it is actually wasting student time. The practice does not make teachers more productive – it makes them less productive. Valuable classroom time is consumed by students calling out their test scores or walking to the front of the room to whisper in the teacher's ear while the teacher is writing the scores in the grade book. Learning the test scores of peers may occur, but such learning has never been advocated as an important educational objective. There are much better ways for teachers and students to be spending their time.

Every task and homework assignment need not be graded. The essential learning occurs when the child is actively engaged in a relevant task. Getting a grade may make the child feel either good or bad, but it adds little to the intended learning.

III. Past policies do not justify a harmful practice.

Advocates of the petitioners refer to the impact of the United States Court of Appeals for the Tenth Circuit ruling as dramatically altering " . . . long-standing customs and practices which comprise the day-to-day operation of our public school systems." (Brief of the Oklahoma Education Association as *Amicus Curiae* in support of Petitioners, p. 3.)

A. Peer grading has not been recognized or validated as a legitimate educational practice. Despite all the claims in the *amicus* briefs supporting petitioners that peer grading is a common longstanding practice, there is scarce evidence in the educational literature that it even exists.

1. No description of the Owasso peer grading practice appears in the educational literature. A computer search of ERIC, the educational research database sponsored by the U.S. Department of Education, reveals only three mentions of peer grading in the half-million educational articles and research studies published from 1966 to the present. None of the three describe the practice used in the Owasso School District. One reports that in a British institution of higher education there was a positive correlation between peer grading and teacher grading (Fry, 1990). The second report mentions that peer grading was used in training teachers of English as a Second Language (Ney, 1990). The third was a conference presentation in which peer grading was mentioned as one of three possible arrangements for individual skill evaluations in a general education class (Bauwens & Hourcade, 1997). Other descriptors were also used in an

attempt to locate relevant references: confidentiality, tests, scoring, student scoring, peer scoring, quiz, peer evaluation and classroom techniques. No professional educational literature could be found that described peer graded scores being entered into teachers' grade books. None mentions the calling out of scores. If the Owasso practice is "long standing," no one has bothered to write about it in the last 35 years, let alone evaluate it.

In an unpublished study by Friedman and Truog (2001), teachers and students in Wisconsin were surveyed about school grading practices. Among the 399 middle school teachers, 22% reported having had students exchange papers and score each other's work (not specifying whether the scores were entered in the grade book), and 10% have had students read their scores or grades aloud so the teacher can write them in the grade book. Among 501 high school teachers, the percentages were 16 and 3, respectively. Among the 852 students who say that "most teachers do this," the percentages were 53 and 23, respectively, but no breakdown is provided on the exact number of teachers nor the frequency of each practice. The Owasso peer grading practice combined peer grading with the calling out of scores, a combination not specifically itemized in this study, but the percentages would have to be less than for either practice alone. If the results of this study can be generalized, it is clear that a small minority of Wisconsin teachers resorted to engaging in the Owasso peer grading practice.

2. Educational measurement textbooks make no mention of peer grading. A survey of seven

recent textbooks on educational assessment revealed that none of them mentioned peer grading and none advocated the use of students to score educational assessments in class (Blythe, T., Allen, D., & Powell, B. S. (1999); Brandt, R. (Ed.) (1998); Fenner, D. E. W. (1999); McMillan, J. H. (2000); Ory, J. C., & Ryan, K. E. (1993); Speck, B. W. (2000); Strickland, K., & Strickland, J. (1998)). Only Speck (2000) mentioned peer evaluation at the college level to teach critical writing skills.

B. No matter how long a practice has been in use, it still can be discovered to be harmful. School segregation was practiced for decades before the Supreme Court ruled that schools could not be both separate and equal. Some teachers may have used the peer grading for a long time, but most teachers reject the practice as harmful to students and as a waste of class time. The absence of the practice from professional educational literature hints that those who do use the practice are not particularly proud of it.

IV. Educators will be aided, not confused, by a clear ruling in this case.

Some worry that, if students cannot score each others' tests and call out grades, teachers will not be able to engage in cooperative learning assignments, that oral recitation will be prohibited, that the Socratic method of questioning cannot be used, and that awards for academic excellence will be forbidden. None of these educational practices is the subject of this case.

A. Cooperative learning and peer editing are completely different from peer grading. Cooperative learning puts students into teams whose members work together to solve some problem or create some product. Each member of the team may contribute in a different but useful way. The children help each other to succeed because the criterion is the team's success, not the success of any individual on the team. Children within the team do evaluate the ideas and contributions of their peers, but they do so on the basis of the extent to which the ideas help to achieve the team's goal.

Cooperative learning differs from peer grading in the following ways:

1. With peer grading students simply follow the teacher's directions to mark an answer right or wrong. In cooperative learning students form their own evaluative judgments on the basis of the contribution to team success.

2. In cooperative learning the judgments that children make about their peers' contributions do not get entered into the teacher's grade book and thus do not become part of the "education record."

Peer editing is used in many schools to help students acquire critical skills in evaluation and editing. Peers provide suggestions and comments on each other's written work and then discuss the comments. The student author can choose to incorporate these suggestions or not in preparing a subsequent draft. Only the final draft is graded and that grading is done by the teacher.

B. Socratic questioning, chalkboard problem solving, classroom discussions, and posting student work on the bulletin board do not violate privacy as defined by FERPA. Naturally teachers want to help their students improve. Correcting errors is one part of the job. Teachers may make judgments about the quality of student achievement based on classroom performance and give feedback in front of the whole class about ways to improve. They may summarize their judgments by entering a letter grade or numerical score into their grade books. They may inform each student privately about that grade or score. FERPA is violated only if the teacher, without parental consent, shares the grade book information about one child with someone not eligible to receive it.

C. Honor society membership and valedictorian status do not violate FERPA. Admission to honor societies and other academic honors are based on averages summed over many courses. Those honored are not identified by a specific test score entered in a teacher's grade book. Students not achieving high academic honors are not individually identified.

D. The only practice that is at issue here is the practice of revealing to peers student test scores that are entered in the teacher's grade book. There is no issue about students working together, forming their own judgments about the contributions of their peers, or providing their own feedback to fellow students. There is no issue about award assemblies or the choice of a valedictorian where the awards are based on a summation of grades. There is no issue about students voluntarily sharing their test scores with each other. However, when teachers turn

the scoring of teacher-made tests over to students to score their neighbor's paper in accordance with the teacher-provided scoring key or require students to call out their scores, they are clearly in violation of FERPA which provides that individual education records remain confidential unless parental consent is given.

The Owasso School District refused to modify their support of peer grading when asked to do so by Ms. Falvo, thereby indicating that they did indeed have a policy, implicit or explicit, endorsing what they term a common practice. Owens, Slee, and Shute (2001) advocate a change in the system: "Instead of focusing on changing the 'bad' behavior of the harasser and 'helping' the victim, consideration may be given to roles, relationships, interactions, and communications within the system that encourage or discourage harassment" (p. 235). Teachers control these relationships by the way they structure classroom tasks (Rosenholtz & Simpson, 1984). When all students are doing the same thing at the same time (unidimensional classrooms), greater social comparison behavior results as Pepitone (1972) demonstrated experimentally. The Owasso peer grading system is the epitome of a unidimensional classroom and maximizes social comparisons among peers.

The systemic solution in this case is simple enough: if school districts want to support peer grading of the type practiced in the Owasso School District, they must first obtain the permission of the parents involved. They would then be in compliance with FERPA.

V. The information itself must be protected, not merely the physical material on which the information is recorded.

The whole purpose of FERPA is to preserve the confidentiality of the information, not to protect the pencil marks on paper or other physical manifestations of the records. If the records were encrypted so that no outsider could decipher them, they could be displayed on a billboard in Times Square with no objection. However, if the records were recorded as magnetic impulses on a hard disk and those records could be accessed and interpreted by a computer hacker, confidentiality is clearly violated even though no physical material changed hands. The intent of the law is clearly to protect the information about individual students unless parents consent to its release.

VI. Publicizing information entered in the teacher's grade book violates the law regardless of the exact timing of the entry.

Some would maintain that at the instant a score is called out it is not yet an education record because the teacher waits a split-second before writing it down in the grade book. Such hair-splitting is nonsense because the information about individual student achievement that appears in the grade book has been disseminated without parental consent. If the teacher first wrote down the grade and then called it out loud, the effect would be just as harmful as if the sequence were reversed.

VII. The grade book is clearly an "education record."

Some argue that the grade book does not qualify as an education record under FERPA. FERPA defines education records as " . . . those records, files, documents, and other materials which –

(i) contain information directly related to a student; and

(ii) are maintained by an education agency or institution or by a person acting for such agency or institution."

Clearly the teacher is acting for an education agency, and the grade book contains information about each student in the teacher's classes. However, FERPA goes on to exclude private documents. It states, "The term 'education records' does not include –

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;"

The grade book is not a private document – its contents are revealed to other educational personnel on a regular basis.

Many school districts require that teacher grade books be turned in to the central office at the end of each academic year where they are maintained permanently.

Information from teacher grade books is also routinely shared in three types of educational meetings:

(1) Individual Educational Plans (IEP). The purpose of IEP meetings is to assess the placement of and the educational program for students eligible for special education. Attendees may include all the child's teachers, the counselor, members of the special education staff, a psychologist, a school administrator as well as the parents and the child. Teachers may share grade books, or excerpts thereof, with members of the planning group in an effort to develop the best possible educational environment for the child.

(2) Student Study Teams (SST). The SST meetings are designed to explore the strengths and weaknesses of students who may be having learning difficulties and to design interventions to help children be successful in school. Attendees may include all those listed for IEP meetings plus outside tutors. Again grade book records are shared.

(3) 504 Meetings. The 504 meetings are designed to make accommodations for children with various types of disabilities. Children may be diagnosed as ADD or ADHD and may need extra time to complete tests. Some may require electronic aids or other accomodations. All the child's teachers are expected to implement the plan that is developed so their input is essential. Grade book records are frequently cited as evidence for what a child can and cannot do.

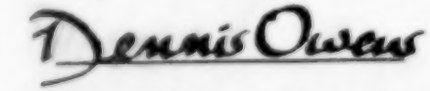
It is obvious that teacher grade books must be included as "education records" because they are not maintained in the sole possession of the maker and they

are revealed to other educational personnel in addition to substitutes.

CONCLUSION

Amici respectfully urge the Court to continue allowing parents the option of disclosing or not disclosing their children's education records as FERPA provides.

Respectfully submitted,



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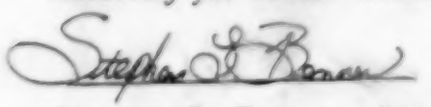

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